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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,962	01/21/2004	Hironobu Takizawa	17378	3889

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400 GARDEN CITY PLAZA
SUITE 300
GARDEN CITY, NY 11530

EXAMINER

TOWA, RENE T

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3736

DATE MAILED: 03/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/761,962	Applicant(s) TAKIZAWA ET AL.	
	Examiner Rene Towa	Art Unit 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5,10,12,29 and 31 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,10,12,29 and 31 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>03/04/04, 01/21/04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Objections

2. Claims 1-2, 4-5, 10, and 12 are objected to because of the following informalities:

Referring to claim 1, at line 3, "the human body" read --a human body-- to avoid a potential lack of antecedent basis problem.

Referring to claim 2, at line 2, the limitations "the catch unit" render the claim indefinite; for example, from the alternative language used in claim 1, it is unclear whether or not the medical capsule retrieval device comprises a catch unit.

Further in regard to claim 2, at line 3, the limitations "a magnet arranged in the medical capsule" renders the claim indefinite. It is unclear whether the capsule retrieval device comprises the medical capsule itself.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 4, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Kerr (US Patent No. 5,941,896).

In regards to claim 1, Kerr discloses a retrieval device comprising a catch unit 10 capable of catching a medical capsule (see figs. 1 & 8-9; column 5/lines 60-61).

In regards to claim 4, Kerr discloses a retrieval device wherein the catch unit 10 is a net capable of retrieving or catching the medical capsule (see figs. 1 & 8-9).

In regards to claim 12, Kerr discloses a retrieval device wherein the retrieval device is capable of being attached to a toilet bowl (see figs. 1 & 8-9).

5. Claims 1-2, 4 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Ambrisco et al. (US Patent No. 6,319,268).

In regards to claim 1, Ambrisco et al. disclose a retrieval device comprising a catch unit 80 capable of catching the medical capsule (see figs. 7, 20G-H, 21B, 31A-B).

In regards to claim 2, Ambrisco et al. disclose a retrieval device wherein the catch unit 80 includes a magnetic material (i.e. stainless steel) (see figs. 7, 20G-H, 21B, 31A-B; column 10/lines 56-59; column 11/lines 42-44).

In regards to claim 4, Ambrisco et al. disclose a retrieval device wherein the catch unit 80 is a net capable of retrieving or catching the medical capsule (see figs. 7, 20G-H, 21B, 31A-B).

In regards to claim 12, Ambrisco et al. discloses a retrieval device wherein the retrieval device is capable of being attached to a toilet bowl (see figs. 7, 20G-H, 21B, 31A-B).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kerr ('896) in view of Berrada et al. (US Patent Application Publication No. 2003/0176884).

Kerr discloses a medical capsule retrieval device, as described above, that teaches all the limitations of the claim except that Kerr does not teach a medical capsule retrieval device wherein the net for retrieving or catching the medical capsule is made of a magnetic material. However, Berrada et al. discloses a retrieval device wherein the net for retrieving or catching the medical capsule is made of a magnetic material (i.e. stainless steel) (see par 0063, at lines 1-4). It would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide a retrieval device similar to that of Kerr with a net similar to that of Berrada et al. in order provide structural resiliency to the wires forming the net.

8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ambrisco et al. ('268) in view of Berrada et al. (US Patent Application Publication No. 2003/0176884).

Ambrisco et al. disclose a medical capsule retrieval device, as described above, that teaches all the limitations of the claim except that Ambrisco et al. do not teach a medical capsule retrieval device wherein the net for retrieving or catching the medical capsule is made of a magnetic material. However, Berrada et al. discloses a retrieval device wherein the net for retrieving or catching the medical capsule is made of a magnetic material (i.e. stainless steel) (see par 0063, at lines 1-4). It would have been

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obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide a retrieval device similar to that of Ambrisco et al. with a net similar to that of Berrada et al. in order provide structural resiliency to the wires forming the net.

9. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kerr ('896) in view of Wellman (US Patent No. 3,150,813).

Kerr discloses a medical capsule retrieval device, as described above, that teaches all the limitations of the claim except that Kerr does not teach a medical capsule retrieval device that comprises a bag. However, Wellman discloses medical sanitary disposal bag (see fig. 1; column 1/lines 48-53). It would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide a medical capsule retrieval device with a bag similar to that of Wellman in order to safely and cleanly store or dispose bag's content.

10. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ambrisco et al. ('268) in view of Wellman (US Patent No. 3,150,813).

Ambrisco et al. disclose a medical capsule retrieval device, as described above, that teaches all the limitations of the claim except that Ambrisco et al. do not teach a medical capsule retrieval device that comprises a bag. However, Wellman discloses medical sanitary disposal bag (see fig. 1; column 1/lines 48-53). It would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide a medical capsule retrieval device with a bag similar to that of Wellman in order to safely and cleanly store or dispose bag's content.

11. Claims 29 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marshall (US Patent No. 6,632,175) in view of Iddan et al. (US Patent No. 6,632,171).

In regards to claim 29, Marshall teaches a retrieval method for retrieving a medical capsule, comprising a step of catching the medical capsule discharged from within the human body (see fig. 2; column 3/lines 58-63) except Marshall does not teach performing the step using a catch unit. However, Iddan et al. disclose a capsule catch unit for catching a medical capsule (see fig.4; see Abstract). It would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide a method similar to that of Marshall with a catch unit similar to that of Iddan et al. in order to help transport the capsule (i.e. without direct contact with the medical practitioner).

In regards to claim 31, Marshall as modified by Iddan et al. disclose a retrieval method for retrieving a medical capsule, as described above, that teaches all the limitations of claim except Marshall as modified by Iddan et al. do not teach the further step of washing the medical capsule.

The Examiner takes official notice that since Marshall as modified by Iddan et al. teach a method wherein a reusable medical capsule is retrieved after discharge from a human body, the method inherently includes the step of washing the medical capsule with a washing unit since the steps of Marshall as modified by Iddan et al. require, inter alia, "swallowing the capsule...through the mouth" and "discharging the capsule...through the rectum" (See Marshall, fig. 2; column 1/lines 44-46; column 3/lines 58-63).

As such, it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide a method similar to that of Marshall as modified by Iddan et al. with a washing step in order to more explicitly disclose the sanitary condition of the capsule at the time of swallowing.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent No. 6,884,213 to Raz et al. discloses a device and method for positioning an object in a body lumen.

US Patent No. 5,143,082 to Kindberg et al. discloses a surgical device for enclosing an internal organ.

US Patent No. 5,336,227 to Nakao et al. discloses a surgical cauterization snare with polyp capturing web net.

US Patent No. 6,620,182 to Khosravi et al. discloses a vascular filter having articulation region and methods of use in the ascending aorta.

US Patent No. 6,245,088 to Lowery discloses a retrievable umbrella sieve and method of use.

US Patent No. 6,165,200 to Tsugita et al. discloses a percutaneous catheter and guidewire having a filter and medical device deployment capabilities.

US Patent No. 5,993,469 to McKenzie et al. discloses a guiding catheter for positioning a medical device within an artery.


US Patent No. 5,147,371 to Washington et al. discloses an apparatus for removing gallstones and tissue during surgery.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rene Towa whose telephone number is (571) 272-8758. The examiner can normally be reached on M-F, 8:00-16:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RTT


MAX HINDENBURG
PATENT EXAMINER
EBC CENTER 3700